



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comment to Proposed Amendments to the Telephone Consumer Protection Act Regulations, CG Docket No. 02-278

Dear Ms. Dortch,

As requested at the meeting on May 10, 2010, the Financial Management Service (FMS) submits this comment in response to the Federal Communication Commission's (FCC) notice of proposed rulemaking (NPRM) to amend its regulations implementing the Telephone Consumer Protection Act.¹ Thank you for your consideration of our comments and for taking the time to meet with us. The NPRM proposes to apply further restrictions on the use of autodialers, namely a requirement that written consent be obtained by the called party. These restrictions could have a significant impact on federal debt collection.

For the reasons explained below, FMS urges the FCC to revise the NPRM to create an exception for the use of autodialers when collecting a delinquent debt. In the alternative, FMS encourages the FCC to clarify that such restrictions would not apply to the collection of federal debts.

The Federal Debt Collection Program

FMS is the bureau within the U.S. Department of the Treasury that is responsible for carrying out the federal governmentwide debt collection program. Under the Debt Collection Improvement Act of 1996 (DCIA), federal agencies are generally required to transfer nontax debts over 180 days delinquent to FMS for collection. The DCIA further requires that FMS maintain a schedule of private collection contractors eligible for referral of debts. One of the purposes of the DCIA is "[t]o rely on the experience and expertise of private sector professionals to provide debt collection services to federal agencies." See 31 U.S.C. § 3711, note.

¹ On May 10, 2010, FMS staff met with the following individuals from the FCC to discuss the implications of the NPRM: Mark Stone, Deputy Chief of the Consumer & Governmental Affairs Bureau; Colleen Heitkamp, Chief of the Consumer Policy Division, Consumer & Governmental Affairs Bureau; and Julie Saulnier, Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau.

Pursuant to the DCIA, FMS has contracted with five private collection contractors to collect debts owed to federal agencies. These private collection contractors are an integral part of our debt collection program. In addition to referrals from FMS, both U.S. Department of Education and the U.S. Department of Health and Human Services separately refer delinquent debts to private collection contractors. Each year, billions of dollars of delinquent debt are referred to these private collection contractors. As the federal government's debt collection program has matured, collection rates have improved, a trend we expect to continue.

Autodialer Restrictions Should Not Apply To Debt Collectors

FMS believes that the restrictions on the use of autodialers should not apply to debt collection calls for three compelling reasons. First, debt collection is inherently different than telemarketing, as it is based on the collection of legitimate debts owed by individuals and other entities with a preexisting obligation to pay. Debt collectors are not using autodialers to cold call potential customers, but are instead using autodialers to contact individuals who have an existing relationship or indebtedness.

Second, debt collectors are already subject to numerous federal and state consumer protection laws, such as the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA), that prevent abusive use of all debt collection practices, including potential misuse of autodialers.

Third, by reducing the potential for human error, autodialers assist with collectors' compliance with consumer protection laws and sound debt collection practices. For example, autodialers can be programmed to call certain area codes only within certain prescribed time periods, so as to avoid collection calls at times prohibited by the FDCPA. Furthermore, autodialers are more precise than human dialing, decreasing the possibility of misdialing.

Use of Autodialers Should be Permitted When Collecting Debts Owed to the U.S., Because Additional Protections Are in Place and the Prohibition Would Decrease Collections Revenue

In the event that the FCC disagrees with FMS's position that debt collectors be permitted to use autodialer technology, FMS requests that the FCC revise the NPRM to clarify that the proposed restrictions on the use of autodialers would not apply to any debt collectors when they are collecting debts on behalf of the United States. This exemption is appropriate because there are mechanisms in place to protect against potential abuses associated with the use of autodialers. Additionally, the loss of efficiencies provided by autodialers would significantly decrease the amount of debt recovered by the United States.

As discussed above, private collection contractors are bound by applicable federal and state law governing debt collection. Furthermore, pursuant to 31 U.S.C. § 3718(a), which governs the use of private collection contractors by federal agencies, federal agencies are

required to maintain ultimate control over debts referred to private collection contractors, including the authority to resolve disputes, compromise claims, and terminate collection action. FMS closely oversees its private collection contractors to ensure that they are compliant with applicable laws as well as the terms of their contracts with FMS. FMS has dedicated personnel to monitor its private collection contractors and to examine any alleged misbehavior. FMS takes this role very seriously and awards contracts only to private collection contractors who have demonstrated a responsible record of debt collection. Moreover, FMS maintains the right to terminate a contract if the private collection contractor does not live up to these standards. FMS is confident that our oversight of our private collection contractors, combined with preexisting federal and state law, will provide the public with sufficient protections to allow for this limited exemption.

Autodialers are critical to the success of our efforts to recover the maximum amount of delinquent debt on behalf of U.S. taxpayers. Making contact with debtors is a relatively inexpensive yet extremely effective way to obtain voluntary payment of delinquent debts. Without the use of such technology, we believe that we will see a significant drop in our collection rate.

Conclusion

As discussed above, the restrictions proposed by the NPRM could have a substantial, negative impact on federal debt collection. We therefore urge the FCC to revise the NPRM to exclude debt collectors from the general restrictions on the use of autodialers or, in the alternative, clarify that such restrictions would not apply when collecting federal debts. Please do not hesitate to contact Richard Burnham, Director, Private Collection Division at 202-874-8700 if you would like any information in addition to this comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Johnson', with a long, sweeping horizontal line extending to the right.

Scott H. Johnson
Assistant Commissioner
Debt Management Services
Financial Management Service
U.S. Department of the Treasury